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STATE OF WYOMING	)	IN THE DISTRICT COURT FOR THE
	) ss.	NINTH JUDICIAL DISTRICT
COUNTY OF TETON	)	
WYOMING JET CENTER, LLC,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Docket No. 17598
	)	
JACKSON HOLE AIRPORT BOARD and	)	
JIM ELWOOD, Airport Executive Director,	)	
as Custodians of the Records,	)	
	)	
Respondents.	)	

MOTION FOR PRELIMINARY INJUNCTION TO MAINTAIN STATUS QUO
AND MOTION FOR AN EXPEDITED HEARING

Petitioner Wyoming Jet Center, LLC, acting by and through its attorney of record, moves the Court for a preliminary injunction to prevent the Jackson Hole Airport from seeking approval from the City of Jackson and Teton County for a budget amendment authorizing the purchase of Jackson Hole Aviation, LLC (JHA), by the Airport and to prevent the Airport from closing on the purchase of the Fixed Base Operator (FBO) currently set for April 30, 2018, until such time as this matter requesting information related to the purchase is resolved. In support of its motion, Petitioner states as follows:

1. On August 31, 2017, Petitioner requested records pursuant to the Wyoming Public Records Act related to a pending decision by the Airport Board whether to purchase JHA or to entertain requests for proposals for a second FBO at the Airport.
2. On September 13, counsel for the Airport responded to the records request by first denying that the Airport is covered by the Wyoming Public Records Act. The Airport Board then said it was voluntarily providing certain records, but withheld the records in six categories involving subjects related to the proposed purchase. Respondents denied access the requests for:
 - a) All communications expressing an interest in selling Jackson Hole Aviation, LLC or its assets to the Jackson Hole Airport or related entity.
 - b) All communications to, from, or between or among the Jackson Hole Airport Board, its members, its staff, and/or consultants related to offers to purchase or sell, or proposals to purchase or sell JHA-LLC or the assets of

- JHA-LLC.
- j) All documents purporting to establish confidentiality in any manner related to JHA-LLC.¹
 - d) All documents reflecting communications with any consulting firm regarding the purchase of JHA-LLC, or the assets of JHA-LLC.
 - e) All documents reflecting conversations to and/or from Jim Elwood regarding JHA-LLC, Wyoming Jet Center, LLC, or any entity or person expressing an interest in forming a second FBO during the year 2017.
 - f) All communications to and/or from Jim Elwood with any person affiliated with any newspaper or publication.²

The records withheld by the Airport all include information about the proposed purchase of the FBO.

3. In a letter dated September 21, 2017, to Airport counsel, Petitioner sought a log of the withheld documents as required by law so that it could evaluate better whether the records were exempt from disclosure under the Public Records Act.

4. Counsel for the Airport was out of the office, and no response was received by the first of October. Given that the Airport Board had indicated that it might make a decision on the purchase in its November 1, 2017, meeting, time was of the essence and the Petitioner could wait no longer to file this action. No log has been provided to date.

5. On November 1, the Airport Board decided unanimously to purchase JHA for \$26 million. First, the Board voted to extend the JHA lease for the next five years, starting after the current lease expires on April 30, 2018.

6. The Airport released little information as to how the FBO was valued, other than a vague assertion that it was based on the lease extension. It is also not clear what the source of funding is for the purchase.

7. A purchase agreement was signed the next day after the meeting, which calls for the closing to take place on April 30, 2018.

8. The agreement calls for approval to be obtained from the city and county for a budget amendment authorizing the purchase within 30 days, which can be extended. Upon information and belief, a hearing is set before the Teton County Commissioners on next Monday, November 13, 2017.

9. Petitioner calculates the deadline to answer the Petition for Access to Records is

¹ Respondents stated that they were working with Jackson Hole Aviation to obtain its agreement to release responsive documents, but have not provided any records as of this date.

² Respondents objected as the request is not limited in time. Petitioner in its Petition modified this request to limit it to communications in 2017.

November 8, 2017. Counsel for the Airport has indicated that the Airport continues to maintain it is not governed by the Public Records Act.

10. In addition, while the Board heard from consultants it had hired at the November 1, 2017, meeting, there was little questioning and almost no discussion among the board members. The resolution approved by the Board was prepared ahead of the meeting and stated that the resolution was “unanimously adopted.” The drafter of the resolution must have known that the Board members had all already decided to purchase the FBO outside of a properly-noticed, public meeting. No vote had been taken in a public meeting before the resolution was read. While such draft resolutions often say that the resolution was adopted in anticipation of the approval, there is no need to predict that the vote would be unanimous. *See Exhibit 1 attached hereto.*

11. Petitioner has contemporaneously filed a Petition asking the Court to declare that the decision to purchase the FBO was “null and void,” pursuant to Wyo.Stat. § 16-4-403(a) of Wyoming Public Meetings Act, as not being made in a public, properly-noticed meeting, and will ask that this case be consolidated with that action in the interests of judicial economy.

12. A preliminary injunction is necessary to maintain the status quo while the Court decides whether the Airport is governed by the Public Records Act, and, if so, whether a log of withheld documents must be provided and whether the withholding of the records is allowed under the Act. The injunction would also allow the Court to decide the action based on the Public Meetings Act. “The purpose of the preliminary injunction is to preserve the status quo until the rights of the parties can be fairly inquired into and determined under equitable conditions and principles.” *Simpson v. Petroleum, Inc.*, 548 P.2d 1, 3 (Wyo. 1976).

13. The interests of the Petitioner and the public will be irreparably harmed if the Airport Board is allowed to purchase the FBO without full disclosure of the facts and circumstances that led to the proposed purchase, particularly how the purchase price was developed.

14. Public participation in government lies at the core of a democracy. As James Madison said:

A Popular Government, without popular information, or the means of acquiring it is but a Prologue to a Farce or a tragedy; or perhaps both. Knowledge will forever govern ignorance; and the people who mean to be their own Governors, must arm themselves with the power which knowledge gives.

Letter from James Madison to W.T. Barry (August 4, 1822) in THE COMPLETE MADISON at 377 (Padover ed. 1953), as quoted in John J. Watkins, ACCESS TO PUBLIC RECORDS UNDER THE ARKANSAS FREEDOM OF INFORMATION ACT, 37 ARK. L. REV. 742, 839 n.434 (1984).

15. “The disclosure acts [public records and open meetings statutes] promote within the agencies affected a sensitiveness to the needs of the public and make democratic government function in a modern society.” *Laramie River Conservation Council v. Dinger*, 567 P.2d 731, 734 (Wyo. 1977).

16. “Maintaining an open and accountable government is particularly important with respect to the expenditure of public funds.” *Houghton v. Franscell*, 870 P.2d, 1050, 1052 (Wyo. 1994).

17. The residents of Teton County will have no meaningful opportunity to know what their government is up to or to participate in the decision by the city and county whether to approve the budget amendment authorizing the expenditure of \$26 million in public funds if the Airport is allowed to proceed without providing the requested information.

18. “The right to know is crucial to the governing powers of the people.” *Sheridan Newspapers v. Sheridan*, 660 P.2d 785, 794 (Wyo. 1984)(quoting *Branzburg v. Hayes*, 408 U.S. 665 (1972)).

19. Notice of this Motion has been served on counsel for the Airport Board.

20. Given the 30-day deadline in the purchase agreement and hearing before the county commission on Monday, Petitioner requests an expedited hearing on this motion.

WHEREFORE, Plaintiffs requests the following relief:

1. Schedule an expedited hearing on this motion;
2. After a hearing on the matter, the issuance of a preliminary injunction prohibiting the Airport Board from proceeding with obtaining budget approval from the City and County and from closing on the purchase of the FBO until issues in this action and the related Public Meetings Act action are resolved.
3. Other such relief as the Court deems just and proper.

Dated this 6th day of November, 2017.

WYOMING JET CENTER, LLC, Petitioner

By: 
Bruce T. Moats (Wyo. Bar No. 6-3077)
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November, 2017, a true and accurate copy of the foregoing MOTION FOR PRELIMINARY INJUNCTION TO MAINTAIN STATUS QUO AND MOTION FOR AN EXPEDITED HEARING was served via email and U.S. Mail, postage prepaid and correctly addressed to:

J. Michael Morgan
Lohf Shaiman Jacobs Hyman & Feiger PC
950 S. Cherry Street, Suite 900
Denver, CO 80246
mmorgan@lohfshaiman.com



RESOLUTION NO. 2017- 16
OF THE
JACKSON HOLE AIRPORT BOARD

**RE: (1) ASSET PURCHASE AGREEMENT WITH JACKSON HOLE AVIATION, LLC,
AND (2) INTENT TO EXERCISE PROPRIETARY EXCLUSIVE RIGHT TO OPERATE
FBO SERVICES AND FACILITIES ON THE AIRPORT**

November 1, 2017

The Jackson Hole Airport Board (the "Board"), a body corporate, organized under the laws of Wyoming, finds that:

WHEREAS, Wyoming law grants municipal corporations and counties, acting singly or jointly, broad authority to develop, maintain, and operate airports and attendant facilities, including authority to:

- a. Acquire, by lease, purchase, or otherwise, lands and other property for airport purposes, and to construct, maintain and operate these facilities for the landing, housing, care, and departure of aircraft;
- b. Construct, maintain, and operate terminal offices; maintenance, repair and assembly shops; accommodations for mail, freight, and express services; and all other attendant facilities; and
- c. Do all things necessary in the discretion of the city, town or county governing authority for the purpose of making effective these powers.

WHEREAS, FBO services include the servicing, repair, operation, fueling, and storage of aircraft and, the provision of such FBO services is within such authority and powers;

WHEREAS, such authority and powers granted to municipal corporations and counties may be vested in an airport board, the Town of Jackson and County of Teton have in fact vested such power and authority in the Board, and the Board may therefore lawfully provide the commercial aeronautical services typically offered by an FBO, and appoint its own personnel necessary to provide such services;

WHEREAS, the Board has entered into an Agreement with the United States Department of the Interior, dated April 27, 1983, as amended, which authorizes the Board to provide certain specifically enumerated services to the public, and other "goods and services at the airport which are customary and usual for airports of [the Airport's] class and size and which are, to the maximum extent practicable, compatible with the purposes of Grand Teton National Park," and FBO services are among those services specifically authorized by such Agreement;

WHEREAS, the terms of the Board's grant agreements with the Federal Aviation Administration generally prohibit the Board from granting anyone an "exclusive right" for the use of the Airport to provide aeronautical services to the public, but contain an exception to the extent the Board itself exercises an exclusive right, which exception is generally referred to as the sponsor's "proprietary exclusive" right; and

WHEREAS, the Board's entry into the Asset Purchase Agreement with Jackson Hole Aviation LLC, in substantially the form attached hereto as **Exhibit A** (the "APA"), and upon the closing of the purchase and sale contemplated by the APA, the exercise of its proprietary exclusive right to offer all FBO services on the Airport, would allow for better efficiency and safety of operations on the general aviation ramp and at the fuel facility, avoid the cost of constructing duplicate FBO facilities, permit the Board to achieve a good return on its investment – helping to assure the Airport can fund needed capital improvements and remain financially self-sufficient, and would therefore be in the best interests of the Airport and the public.

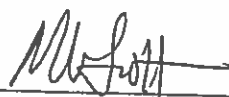
NOW THEREFORE, in open meeting and on motion made, seconded and unanimously adopted, the Jackson Hole Airport Board hereby resolves as follows:

1. The APA, in substantially the form attached hereto as **Exhibit A**, together with all other documents referenced in and attached to the APA as the exhibits (the "Ancillary Documents"), and all of the transactions contemplated by the APA and Ancillary Documents, are hereby approved and the Board is authorized to enter into the APA and perform the obligations described therein.
2. The Board President is authorized, empowered and directed to execute and deliver in the name and on behalf of this Board the APA and Ancillary Documents, each with such changes as the President may approve, such approval to be conclusively evidenced by his signature thereto.
3. The officers of the Board are authorized and directed to execute and deliver in the name and on behalf of the Board any and all documents and instruments and to take any and all actions contemplated by the APA and the Ancillary Documents, to deliver such closing certificates, instruments of transfer and assignment as they deem appropriate, and to take in the name of and on behalf of the Board any and all actions necessary and desirable to effectuate the transactions contemplated by the APA, the Ancillary Documents or the foregoing resolutions.
4. Effective upon closing of the purchase and sale contemplated by the APA, the Board shall exercise its proprietary exclusive right to provide FBO services and operate FBO facilities on the Airport, and in that regard to be the exclusive provider of aviation fuel storage and into-plane sale and/or delivery of aviation fuel, aviation ramp services, aircraft maintenance and repair services and aircraft hangaring services on the Airport. Said exclusive right shall not extend to non-FBO aeronautical services such as aircraft catering services, aircraft cleaning and detailing services, the transportation of persons or property from aircraft landed, aircraft charter, flight instruction or scenic flights at and from the Airport.

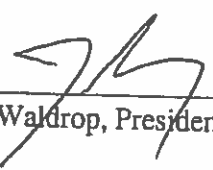
Adopted by the Board in open and public meeting this 1st day of November 2017.

ATTEST:

JACKSON HOLE AIRPORT BOARD



Secretary

By: 

Jim Waldrop, President